

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 10-CV-11694-RGS

JOSE M. PITTOL

v.

HSBC MORTGAGE SERVICES INC.

ORDER ON DEFENDANT'S MOTION TO DISMISS

April 29, 2011

STEARNS, D.J.

Defendant HSBC Mortgage Services Inc. (HSBC) moves to dismiss plaintiff Jose M. Pittol's Complaint for failure to prosecute under Fed. R. Civ. P. Rule 41(b). Under this rule, "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it." "Dismissal with prejudice is a harsh sanction, which runs counter to our strong policy favoring the disposition of cases on the merits. As a result, we have indicated that such an option [under Rule 41(b)] should be employed only when a plaintiff's misconduct is particularly egregious or extreme." *Benjamin v. Aroostock Med. Ctr., Inc.*, 57 F.3d 101, 107-108 (1st Cir. 1995) (internal quotations and citations omitted). Disobedience of court orders constitutes extreme misconduct warranting dismissal. *Cintron-Lorenzo v. Departamento de Asuntos del Consumidor*, 312 F.3d 522, 525-526 (1st Cir. 2002).

Here, HSBC alleges without opposition that Pittol has failed to comply with the court's December 21, 2010 Order to file a proposed pretrial schedule, as well as the court's December 28, 2010 Order to serve initial disclosures by January 14, 2011 and complete discovery by July 15, 2011. With respect to discovery, HSBC alleges that on February 16, 2011, it sent its First Set of Requests for Documents and First Set of Interrogatories and informed Pittol that responses were required to be served by March 18. Having heard nothing from Pittol, on April 7, 2011, HSBC again requested responses by April 13 and warned that it would seek dismissal of the case should he fail to respond. No response was received.

The court finds that to date, Pittol has not complied with two Orders and has utterly failed to prosecute his case. However, where a pro se plaintiff is involved, a dismissal should enter only after a clear warning that the sanction will be imposed in the absence of reasonable compliance with the court's orders. *Pomales v. Celulares Telefonica, Inc.*, 342 F.3d 44, 49-50 (1st Cir. 2003). This Order serves as the court's warning to Pittol that if he fails to comply with the court's December 6, 2010 and December 28, 2010 Orders within fourteen (14) days of the date of this Order, the court will grant HSBC's motion to dismiss for failure to prosecute with prejudice.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE